

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of Tariff Change to)
Reflect 2006 Rate Increase Pursuant)
To Decision and Order No. 21768.)
_____)

TRANSMITTAL NO. 06-0002

ORDER NO. 22836

Filed September 11, 2006
At 2 o'clock P.M.

for Brother K. Kane
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
for KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Brother K. Kane

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of Tariff Change to)
Reflect 2006 Rate Increase Pursuant)
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Young Brothers is a Hawaii corporation authorized to operate as a common carrier by water pursuant to the Hawaii Water Carrier Act, Hawaii Revised Statutes ("HRS") Chapter 271G. Young Brothers transports property by barge between all major islands of the State of Hawaii in twelve (12) scheduled weekly departures

from Honolulu to ports on each island. This service is provided under the terms set forth in Young Brothers' Local Freight Tariff No. 5-A, which contains the commodity rates to be charged for the transport of property, as well as the sailing schedules and general rules applicable to all shipments.

B.

Young Brothers' Application

On August 4, 2006, Young Brothers filed its Application for approval of a tariff change to reflect a 2006 across the board rate increase of 5.5%, pursuant to its zone practice ("Zone Practice") established in Decision and Order No. 19115, filed on December 20, 2001, as extended by Decision and Order No. 21768, filed on April 22, 2005, in Docket No. 01-0255.¹ The Zone Practice allows Young Brothers to adjust its rates within a reasonable zone by an annual maximum increase of 5.5% and an annual maximum decrease of 10%, without a rate case proceeding, provided that Young Brothers does not exceed its authorized allowed rate of return on its average depreciated rate base. According to Young Brothers, "one of the overriding purposes of [its] Zone Practice [is] the simplification of ratemaking to achieve administrative and regulatory efficiency."²

¹The Application was served upon the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to HAR § 6-61-62, the Consumer Advocate is an *ex officio* party to all proceedings before the commission.

²Motion at 2.

All Zone Practice filings must comply with HRS § 271G-17(b), which requires 45 days' notice of any proposed tariff change. A Zone Practice filing must also include, among other things, submission of test year financial statements. Although not explicitly required by commission order, in previous Zone Practice filings, Young Brothers has used a test year that conforms to the requirements of HAR § 6-65-31(e).

C.

Young Brothers' Motion

Concurrently with the filing of its Application on August 4, 2006, Young Brothers filed its Motion for commission approval to modify the requirement of HAR § 6-65-31(e) to allow Young Brothers to use a 2006 calendar test year, i.e., January 1 to December 31, 2006, rather than a 2007 calendar test year, i.e., January 1 to December 31, 2007. Young Brothers asserts that use of the 2007 calendar test year, as required by HAR § 6-65-31(e), would impose a financial hardship upon it and would be unjust and unreasonable.

Young Brothers states that it had initially intended to file its Application on June 2, 2006, and therefore prepared supporting financial documents for a 2006 test year. However, this filing became secondary to a separate application by Young Brothers that was pending before the commission to terminate its

less than container load service ("LCL") to and from Kahului Harbor on Maui (Docket No. 2006-0120).³

In support of its Motion, Young Brothers argues (1) that it is "barely over a month since the end of the period (June 30) for which a 2006 test year would have applied," (2) the use of verifiable data for the first six (6) months of 2006 "would facilitate regulatory and administrative review" for the commission and the Consumer Advocate, and (3) further delay in filing its Zone Practice "translates into mounting loss of potential revenue for Young Brothers."⁴ In addition, according to Young Brothers, "[s]hifting to a 2007 test year would require substantially more expenses and resource commitments than already expended on compiling, and subsequently updating, the 2006 test year demand forecasts and financial projections."⁵

³Young Brothers represents that, among other things, Docket No. 2006-0120 required it to prepare for and attend public hearings and community meetings, respond to information requests from the commission and the Consumer Advocate, collaborate with freight forwarders and consolidators, and negotiate a settlement of the issues in that proceeding.

By letter dated August 21, 2006, Young Brothers notified the commission that a memorandum of understanding ("MOU") had been entered into by Young Brothers, the Consumer Advocate, and the State of Hawaii, Department of Transportation regarding Docket No. 2006-0120. As a result of the MOU, Young Brothers has since withdrawn its request to terminate its LCL service, and Docket No. 2006-0120 has been closed. See Order No. 22814, filed on September 1, 2006.

⁴Motion at 3.

⁵Id.

II.

Discussion

As detailed above, under the Zone Practice established by Decision and Order No. 19115, filed on December 20, 2001, as extended by Decision and Order No. 21768, filed on April 22, 2005, Young Brothers is allowed to increase or decrease its rates within a reasonable zone, "without a rate case proceeding, provided that YB does not exceed its authorized allowed rate of return."⁶ The benefits of the Zone Practice as outlined by Young Brothers include "[a] more streamlined regulatory process for the ultimate benefit of YB's ratepayers, which substantially eliminates regulatory lag for rate adjustments within a reasonable zone, and reduces the substantial costs associated with the regulatory process"; "[i]mprovements in the level of service to customers"; and "[s]afeguards to ensure that there is reasonable protection of the public interest."⁷

As part of its Zone Practice, Young Brothers must file, among other things, "[t]est year financial statements."⁸ Even though Decision and Order No. 21768 is silent on the issue, Young Brothers has reasonably interpreted "[t]est year financial

⁶Decision and Order No. 19115, filed on December 20, 2001, in Docket No. 01-0255 ("Decision and Order No. 19115"), at 1.

⁷Id. at 3-4.

⁸See Stipulation Between Young Brothers, Limited and the Division of Consumer Advocacy to Continue Decision and Order No. 19115 Rate Flexibility Within a Reasonable Zone, filed on December 6, 2004, at 8; see also Decision and Order No. 21768, filed on April 22, 2005, in Docket No. 01-0255.

statements" to mean financial statements for the test year defined in HAR § 6-65-31(e).

However, HAR § 6-65-31(e) expressly states:

The test year for any general rate increase application is:

(1) January 1 to December 31 of the year in which the application is filed, if the application is filed within the first six months of the year; and

(2) January 1 to December 31 of the year following of the year in which the application is filed, if the application is filed within the last six months of the year.

HAR § 6-65-31(e) (emphasis added).

By its terms, HAR § 6-65-31(e) does not directly apply to Young Brothers' Zone Practice filing because the Zone Practice filing is not a request for a "general rate increase." And, as described above, provided that Young Brothers does not exceed its authorized allowed rate of return, Decision and Order No. 19115 allows Young Brothers to increase or decrease its rates within a reasonable zone, without a rate case proceeding.⁹ As such, the commission finds HAR § 6-65-31(e) only persuasive, and not binding on the commission for purposes of a Zone Practice filing by Young Brothers. Indeed, there does not appear to be any statute or administrative rule that is binding on the commission for purposes of defining the "test year" for the financial statements that Young Brothers must file in connection with its Zone Practice. Accordingly, the commission will look to HAR § 6-65-31(e) for guidance in determining the requirements for Young Brothers' "test year financial statements," but will allow

⁹See supra note 6.

deviation from strict conformance to HAR § 6-65-31(e), as appropriate, where the circumstances justify the deviation in connection with a Zone Practice filing.¹⁰

Young Brothers filed its Application on August 4, 2006. As such, under HAR § 6-65-31(e)(2), the applicable test year for Young Brothers' Application would be January 1 to December 31, 2007. The commission, however, agrees with Young Brothers that the use of a 2007 calendar test year would be unduly burdensome given the earlier steps taken by Young Brothers to compile supporting documentation relevant to the 2006 test year. Along with the additional time commitment necessary to gather data to support the use of a 2007 test year, denying Young Brothers' request would delay determination on its Application leading to a further loss of potential revenue for Young Brothers. The

¹⁰Young Brothers argues that the commission may waive the test year requirement in HAR § 6-65-31(e) by utilizing the waiver provision in HAR § 6-61-92. By its terms, however, HAR § 6-61-92 is limited to subchapter 8 of chapter 6-61. It states:

The commission may in its discretion modify the requirements of this subchapter, if the requirements of this subchapter would impose a financial hardship on the applicant or be unjust or unreasonable.

HAR § 6-61-92.

To avoid the subchapter limitations in HAR § 6-61-92, Young Brothers argues that its "request for modification is made under the PUC's general rule on motions, HAR § 6-61-41." Motion at 1, n.1. The commission is not persuaded that the mere filing of a motion under the commission's general motions provision, HAR § 6-61-41, is sufficient to implicate the waiver provision in HAR § 6-61-92, especially given that HAR § 6-61-92 is limited to modification of the requirements of its subchapter. HAR § 6-61-92 is in subchapter 8 of chapter 6-61 while HAR § 6-61-41 is in subchapter 3.

commission also finds that use of a 2006 test year, with verifiable data for the first six (6) months of 2006, would facilitate the commission's review of the Application. Accordingly, the commission concludes that Young Brothers' request for approval to use a 2006 test year in support of its Application should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. Young Brothers' Motion for Approval to Modify Test Year is granted.
2. Young Brothers is authorized to utilize a 2006 calendar test year, including the use of calendar year 2006 financial data in support of its Application.

DONE at Honolulu, Hawaii SEP 11 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

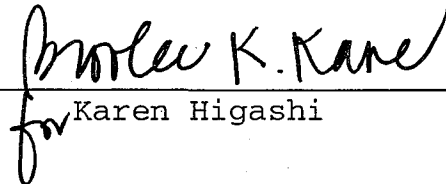
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22836 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CHERYL KIKUTA
ACTING EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

P. ROY CATALANI
SANDRA HOSHIDA
YOUNG BROTHERS, LIMITED
Pier 40, P.O. Box 3288
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for Karen Higashi

DATED: SEP 11 2006